IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

OP.No. 32181 of 2001(S)

OA.262/1998 of CENTRAL ADMINISTRATIVE TRIBUNAL,EKM. BENCH
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PETITIONER:
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1. UNION OF INDIA THROUGH
GENERAL MANAGER, SOUTHERN RAILWAY -
HEAD QUARTERS OFFICE,
PARK TOWN P.O., CHENNAI 3

2. THE DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, TVM

3. THE SR.DIVISIONAL OPERATIONS MANAGER,
SOUTHERN RAILWAY, TVM.

4. THE CHIEF OPERATIONS MANAGER,
SOUTHERN RAILWAY, HEAD QUARTERS OFFICE,
PARK TOWN P.O., CHENNAI-3

5. THE STATION MANAGER,
SOUTHERN RAILWAY, NAGERCOIL JUNCTION

BY ADV. SRI.V.J.JOSEPH, SC. RAILWAYS
SRI.ALEXANDER THOMAS, SC,RAILWAYS

RESPONDENTS:

R.RADHAKRISHNA RAJU,
S/O A.RAMACHANDRA RAJU,
STATION MASTER, SOUTHERN RAILWAY,
VALLIYUR,
PERMANENT ADDRESS; BESSY BHAVAN,
PALLIPAD POST, ALLEPPEY DISTRICT

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU
SRI.MARTIN G.THOTTAN
SRI.MANNATIL KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1- TRUE COPY OF CHARGE MEMORANDUM DTED 24.1.96 SERVED ON THE RESPONDENT

EXT.P2- TRUE COPY OF EXPLANATION DATED 4.2.96 OF THE RESPONDENT

EXT.P3- TRUE COPY OF LETTER/ORDER DATED 8.2.96 OF THE THIRD PETITIONER

EXT.P4- TRUE COPY OF LETTER DATED 9.4.96 OF THE RESPONDENT

EXT.P5- TRUE COPY OF THE LETTER DATED 20.5.96 OF THE THIRD PETITIONER TO THE ENQUIRY OFFICER.

EXT.P6- TRUE COPY OF NOTICE DATED 8.7.96.

EXT.P7- TRUE COPY OF THE LETTER DATED 15.7.96 OF THE JUNIOR ENGINEER/SIGNAL/NAGERCOIL.

EXT.P8- TRUE COPY OF STATEMENT OF DEFENCE DATED 27.7.96 OF THE RESPONDENT

EXT.P9- TRUE COPY OF ENQUIRY REPORT DATED 13.8.96

EXT.P10- TRUE COPY OF REPRESENTATION DATED 10.10.96 OF THE RESPONDENT

EXT.P11- TRUE COPY OF THE DEPOSITION OF WITNESSES.

EXT.P12- TRUE COPY OF THE ORDER DATED 7.1.97 OF THE THIRD PETITIONER

EXT.P13- TRUE COPY OF THE APPEAL DATED 23.1.97 OF THE RESPONDENT

EXT.P14- TRUE COPY OF THE ORDER DATED 1.2.97 OF THE 2ND PETITIONER

EXT.P15- TRUE COPY OF the ORDER DATED 22.8.97 OF THE 4TH PETITIONER.

EXT.P16- TRUE COPY OF O.A.262/98 FILED BY THE RESPONDENT BEFORE CAT.

EXT.P17- TRUE COPY OF REPLY STATEMENT DATED 17.4.98 IN O.A.262/98 BY THE PETITIONERS

EXT.P18- TRUE COPY OF REJOINDER DATED 12.11.98 OF THE RESPONDENT FILED IN O.A.262/98

EXT.P19- TRUE COPY OF ADDITIONAL REPLY STATEMENT FILED BY THE PETITIONER IN O.A.262/98

EXT.P20- TRUE COPY OF the ORDER DATED 2.2.2001 IN O.A.262/98 OF CAT INCLUDING DISSENTING NOTES AND REFERRENCE ORDER

EXT.P21- TRUE COPY OF ORDER DATED 20.3.01 OF THEJUDICIAL

MEMBER OF THE CAT IN O.A.262/98

EXT.P22- TRUE COPY OF 369-B MEMO ISSUED BY THE RESPONDENT.

(TRUE COPY)

P.A TO JUDGE

K.S.RADHAKRISHNAN & V.K.MOHANAN, JJ

O.P. 32181/2001

Dated this the 9th day of August, 2007

JUDGMENT

Radhakrishnan, J

Writ Petition is preferred seeking a writ of certiorari to quash Ext.P21 order and the dissenting note of the learned Vice Chairman of CAT, contained in Ext.P20 order and other consequential reliefs.

2. Respondent herein was working as a Station Master. Disciplinary proceedings were initiated against him and as per Annexure-10, the disciplinary authority found him guilty of charges and awarded the penalty of reduction to the grade of Assistant Station Master in the grade of Rs.1200-2040 for a period of ten years. Against the same he preferred an appeal and the Appellate Authority reduced the penalty to six years from ten years.

3. The matter was taken up before the Tribunal. Divergence of opinions were expressed by the members on the following issues.

> (i). whether the non-supply of documents requested for by the applicant and non-summoning of one witness requested for by

the applicant has caused prejudice to the applicant's case.

(ii). whether non-questioning by the Enquiry Officer of the applicant generally on the evidence appearing against him to enable him to explain the evidence appearing against him under Rule 9(21) has caused any prejudice to the applicant's case.

(iii). whether keeping in view the articles of charges against the applicant the Disciplinary authority's A-10 order can be treated to be an order passed after application of mind and after going through all aspects of the case.

(iv). In the facts and circumstance of the case whether the applicant is entitled to for the reliefs sought for under paragraphs 8 (a), (b) and (c).

4. The matter was then referred to a third member, who concurred with the opinion expressed by the judicial member and quashed A-10, A-14 and A-16 and directed the respondents to restore the applicant back to his original grade and post him with

consequential benefits including arrears of pay and allowances. It was also made clear that the order would not stand in the way of the department proceeding with the disciplinary proceedings against the applicant from the stage of supply of documents sought by the applicant to enable him to effectively defend his case in accordance with law giving him an opportunity to examine the witnesses on his side.

5. Counsel appearing for the Railways contended there is no justification to interfere with the views expressed by Administrative members of the Tribunal. On the other hand, counsel appearing for the respondent submitted that the view expressed by the judicial member in Ext.P10 order is in accordance with law. We, in the facts and circumstances of the case, agree with the views expressed by the judicial member that no effective opportunity was not given to the delinquent in defending his case.

6. We are inclined to give a direction to the Disciplinary authority to complete the disciplinary proceedings against the respondent within a period of

four months from the date of receipt of a copy of this judgment. We make it clear that the documents, mentioned in Item Nos. 1 and 3 in Ext.P4, need not be supplied and the additional witness sought to be summoned be allowed.

7. Counsel for the respondent submitted that the other three documents mentioned in Ext.P4 were not supplied to him. If that be so, the department should supply those documents as well.

8. We make it clear that we are not expressing any final opinion on the various contentions raised by the counsel on either side.

K.S.RADHAKRISHNAN
Judge

V.K.MOHANAN
Judge

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